

SERVICE DATE - AUGUST 29, 2003

SURFACE TRANSPORTATION BOARD¹

DECISION

Finance Docket No. 32530

KANSAS CITY SOUTHERN RAILWAY COMPANY—CONSTRUCTION
AND OPERATION EXEMPTION—GEISMAR INDUSTRIAL AREA
NEAR GONZALES AND SORRENTO, LA

Decided: August 28, 2003

By decision served on June 30, 1995 (June 1995 decision), the ICC conditionally exempted from the prior approval requirements of 49 U.S.C. 10901 a proposal by the Kansas City Southern Railway Company (KCS) to construct and operate approximately 9 miles of track beginning at milepost 814 and running in a northwesterly direction to the Geismar industrial area near Gonzales and Sorrento, in Ascension Parish, LA. The June 1995 decision stated that, upon completion of the environmental review process, a further decision would be issued addressing the environmental impacts associated with the project and making the exemption effective at that time, if appropriate.

On August 27, 1998, the Board served a decision (August 1998 decision) holding the proceeding (including the environmental review process) in abeyance until the issuance of a final written decision in the then-pending Canadian National Railway Company (CN)-IC control proceeding (STB Finance Docket No. 33556). The August 1998 decision stated that CN, IC, and KCS had announced that they had entered into a 15-year marketing alliance, as well as a separate access agreement, contingent upon the Board's approval of the CN-IC control application, that would allow KCS access to BASF Corporation (BASF), Borden Chemicals and Plastics Ltd. (Borden), and Shell, U.S. (Shell), the three chemical plants at Geismar, LA, that had supported this construction exemption request. The decision explained that the access agreement would apparently allow KCS to provide the same service for which it had filed this construction exemption, using existing track.

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 (1995) (ICCTA), abolished the Interstate Commerce Commission (ICC) and transferred certain functions and proceedings to the Surface Transportation Board (Board) effective on January 1, 1996. Section 204(b)(1) of the ICCTA provides, in general, that proceedings pending before the ICC on the effective date of that legislation shall be decided under the law in effect prior to January 1, 1996, insofar as they involve functions retained by the ICCTA. This decision relates to a proceeding that was pending with the ICC prior to January 1, 1996, and to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

Subsequently, in Decision No. 37 of the CN/IC control proceeding,² the Board required modification of the access agreement to grant KCS access to Rubicon Inc, Uniroyal Chemical Company, Inc, and Vulcan Chemicals under the same terms and conditions that governed KCS's access to BASF, Borden, and Shell. Decision No. 37, slip op. at 32-33. In view of this action, KCS has had, and continues to have, access to these shippers without the need for any new construction.

This proceeding has been held in abeyance for 5 years, and there have been no substantive filings in the proceeding during that time. Accordingly, it appears that there is no longer any need to hold this proceeding open. Therefore, in the absence of a showing within 30 days by KCS or any other party, of a need for the Board to keep this matter pending, the Board intends to dismiss the proceeding.

It is ordered:

1. Pleadings demonstrating a need to keep this proceeding pending are due by September 29, 2003.
2. This decision is effective on the date of service.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

² Canadian National Railway Company, Grand Trunk Corporation, and Grand Trunk Western Railroad Incorporated—Control—Illinois Central Corporation, Illinois Central Railroad Company, Chicago, Central and Pacific Railroad Company, and Cedar River Railroad Company, STB Finance Docket No. 33556, Decision No. 37 (STB served May 25, 1999).